

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA**

**WILLIE MCNAIR**

**Plaintiff**

**v.**

**RICHARD ALLEN, Commissioner  
Alabama Department of  
Corrections;**

**GRANTT CULLIVER, Warden,  
Holman Correctional Facility; and**

**OTHER UNKNOWN EMPLOYEES  
AND AGENTS, Alabama  
Department of Corrections,  
Individually, and in their official  
capacities.**

**Defendants.**

**No. 2:06-cv-695-WKW**

**PLAINTIFF/COUNTER-DEFENDANT'S  
ANSWER TO COUNTERCLAIMS**

Plaintiff/Counter-Defendant Willie McNair states as follows in answer to the counterclaim for declaratory judgment alleged in the Defendants/Counter-Plaintiffs's

Answer:

**Response to Numbered Paragraphs**

1. Admitted.
2. Plaintiff/Counter-Defendant admits that Defendants/Counter-Plaintiffs

are seeking an order declaring that their lethal injection protocol is constitutional, but denies any remaining allegation in paragraph 2 of the Counterclaim.

3. Admitted.

4. Plaintiff/Counter-Defendant admits that James Callahan is on death row and that Defendants/Counter-Plaintiffs have filed a motion to join him as a Counter-Defendant.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Plaintiff/Counter-Defendant admits that he was convicted of capital murder and sentenced to death, but denies that he was duly convicted and duly sentenced.

12. Plaintiff/Counter-Defendant cannot admit or deny the allegation in paragraph 12 of the Counterclaim. See Defendants' Answer p. 7.

13. Admitted.

14. Admitted

15. Plaintiff/Counter-Defendant admits that the State has an interest in finality but denies that such interest is more important than determining the constitutionality of state court convictions, sentences, and methods of carrying out sentences.

16. Denied.

17. Denied.

18. Denied.

19. Plaintiff/Counter-Defendant admits that courts around the country are considering whether lethal injection protocols are constitutional, but denies the first sentenced of paragraph 19 of the Counterclaim.

20. Plaintiff/Counter-Defendant admits that he was convicted of capital murder.

21. Admitted.

22. Admitted.

23. Admitted.

24. Plaintiff/Counter-Defendant admits that James Callahan was convicted of capital murder.

25. Admitted.

26. Plaintiff/Counter-Defendant admits that courts have made findings

consistent with the allegations in paragraph 26 of the Counterclaim.

27. Admitted.

28. Admitted.

29. Admitted.

### **Count I**

30. Admitted.

31. Plaintiff/Counter-Defendant admits that Willie McNair and James Callahan are on death row but deny that James Callahan is currently a Counter-defendant.

32. Admitted.

33. Plaintiff/Counter-Defendant denies the allegation about his interest.

34. Denied.

35. Denied.

### **Count II**

36. Admitted.

37. Plaintiff/Counter-Defendant admits that Willie McNair and James Callahan are on death row but deny that James Callahan is currently a Counter-Defendant.

38. Admitted.

39. Plaintiff/Counter-Defendant denies the allegation about his interest.

40. Denied.

41. Denied.

### **Additional Defenses**

1. Defendants/Counter-Plaintiffs have failed to state a claim on which relief could be granted.

2. Defendants/Counter-Plaintiffs's claims are barred by waiver and estoppel.

3. Defendants/Counter-Plaintiffs's claims are barred by unclean hands.

4. The declaratory judgment sought by the Defendants/Counter-Plaintiffs is unmerited because, as alleged in the original complaint against Defendants, Alabama's manner and method of execution does in fact subject death-sentenced prisoners to a risk of an excruciating painful and improperly anesthetized death. In fact, Alabama executes its citizens by methods considered too cruel to use on dogs by the American Veterinary Medical Association. Plaintiff/Counter-Defendant hereby incorporates by reference all of the facts and arguments alleged in the original complaint.

5. With respect to the Defendants/Counter-Plaintiffs's Motion to Join Additional Defendant in Counterclaim, the Defendants declined to divulge the

execution protocol when requested by Plaintiff and, in the absence of such information, Plaintiff/Counter- Defendant is unable to make any informed response as to whether joinder of James Harvey Callahan as an additional defendant is appropriate. There is no way to determine at this point whether there is any risk of impairment to either Counter-Defendant's rights by proceeding jointly or independently.

Respectfully submitted,

s/Randall S. Susskind  
Randall Susskind (SUS002)

s/Cathleen I. Price  
Cathleen I. Price (PRI056)

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Counsel for Willie McNair

CERTIFICATE OF SERVICE

I certify that on October 19, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: J. Clayton Crenshaw and James W. Davis.

s/ Randall S. Susskind  
Randall S. Susskind (SUS002)  
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